

No. 9/7/86-6Lab./2444.—In pursuance of the provisions of section 17 of the Industrial Dispute Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s. Kishor Textile Mill, 41/4, Bahalgarh Road, Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 70 of 82.

between

SHRI JANG BAHADUR, WORKMAN AND THE MANAGEMENT OF M/S. KISHOR TEXTILE MILL,
41/4, BAHALGRH ROAD, SONEPAT.

Shri Bahadur Yadav, A.R. for the workman.
Shri R.C. Sharma, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Jang Bahadur and the management of M/s. Kishor Textile Mill, 41/4, Bahalgarh Road, Sonapat, to this Court, for adjudication,— vide Haryana Government Gazette Notification No. ID/SPT/31/82/19742, dated 27th April, 1982 :—

Whether the termination of service of Shri Jang Bahadur was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent as a Weaver since 2nd December, 1977, on monthly wages of Rs. 330 but the respondent chose to terminate his services unlawfully w.e.f. 10th March, 1981 without giving any notice or payment or any retrenchment compensation as envisaged under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). *Inter alia*, it is alleged that the claimant was active unionist and such, he has been consistently espousing the case of the workmen employed in the various Textile Units at Sonapat and that on 12th December, 1980 a general demand notice was raised by the workmen without any response from the respondent.

3. In the reply filed by the respondent, the preliminary pleas projected are that the claimant along with other workmen resorted to and actively instigated others to go in for stay in tool-down strike on 31st January, 1981 and thereafter the workmen went on strike and also indulged in other violent and illegal activities, though the strike was prohibited by the Government of Haryana on 10th March, 1981 but the workman and many others did not report for duty.

4. Replication filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issues were settled for decision on 25th October, 1982 :—

(1) Whether the reference is bad for reason stated in additional plea para 1 & 2 of written statement? If so, to what effect?

(2) Whether the termination of services of Shri Jang Bahadur was justified and in order? If not, to what relief is he entitled?

6. The management examined MW-1 Shri Prahalad Singh, Head Clerk, Office of the Labour-cum-Conciliation Officer, Sonapat and MW-2 Shri Suresh Kumar, Accounts Clerk. The workman examined WW-1 Shri Rajeshwar Prashad and himself appeared as WW-2.

7. The learned Authorised Representatives of the parties heard.

Issue No. 1

8. The learned Authorised Representative of the respondent Shri R.C. Sharma frankly conceded that the present reference cannot be held to be bad in law, in view of the preliminary pleas No. 1 and 2 taken by the management. He further agreed that plea No. 2 is a mixed question of law of facts and can be more appropriately disposed of while deciding issue No. 2. So, this issue is answered against the management.

Issue No. 2

9. To prove this issue, the management examined MW-1 Shri Prahalad Singh, Head Clerk, office of the Labour-cum-Conciliation Officer, Sonapat, who produced documents Ex. M-1 to

Ex. M-9 from the record of his office. He also placed on record Ex. M-10,—*vide* which the strike resorted to by the workmen was prohibited by the Government of Haryana. MW-2 is Shri Suresh Kumar, who stated that the workforce of the respondent resorted to stay-in tool down strike in the month of January 1981 and later on they went on complete strike. The management affixed notices Ex. M-2 to M-8 on the notice board and so Ex. M-11 and further despatched letters Ex. M-12 and Ex. M-13 to the workers by post. He further stated that the workman failed to report for duty, so, his name was struck off from the rolls of workman. He also stated that in the premises of M/s. Om Weaving Factory, there are other three being run under the name and style of M/s. Jagdish Textile and M/s. Shankar Textile.

10. The workman to negate the plea of the respondent that the respondent unit has since been closed w.e.f. 14th June, 1981 examined WW-1 Shri Rajeshwar Parshad, who stated that the respondent unit was closed in the year 1981 and in those days he was employed in M/s. Om Weaving Sonapat and that the respondent concern is also located in the same premises, where he was employed and two other concerns M/s. Shankar Textile and Jagdish Textile were also located in the same premises and the respondent concern is still on the rails and simply wages are being paid to the workmen from the accounts books of M/s. Om Weaving. The workman when he appeared as WW-2 made a statement in complete corroboration his claim.

11. The learned Authorised Representative for the management Shri R.C. Sharma for cefully contended that since the claimant did not resume his duty after prohibition of strike by the Government of Haryana,—*vide* gazette notification dated 9th March, 1981, the management was justified in terminating the services under the Industrial Employment (Standing Orders) Punjab (Haryana First amendment) Rules, 1959. From the said rules a pointed reference was made to rule 20(1)(k). The said rule contains acts and omissions which shall be taken as mis-conduct. One of the clause is that any workman striking work illegally shall be guilty of mis-conduct. The plea of termination of service of the workman in the end of March, 1981 was taken by the management to prove its point that after the gazette notification dated 9th March, 1981, the management was justified in terminating the services of the workman for wilful absence and also for mis-conduct as provided in the Standing Orders referred to above. The plea of the management that the workman did not resume his duty after prohibition of strike by the Government of Haryana is a trumped up one, because in case the workman would not have been to resume his duty, I see no reason for him to raise a demand notice on 13th November, 1981, which he did. So, I am inclined to go with the workman that the management deliberately prevented him from resuming his duty after the strike was prohibited by the Government of Haryana and thereby terminated the services in flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947. So, I find the termination illegal and void *abinitio* and not sustainable in the eyes of law and as such the same is set aside and the workman is ordered to be reinstated forth with continuity of service and with full back wages. I, see no reasons to disbelieve the statement of MW-2 Shri Rajeshwar Parashad that the respondent concern is still on the rails and simply wages are being paid from the account books of M/s. Om Weaving. So, the plea of closure of the unit by the respondent is not tenable. The reference is answered and returned accordingly. There is no order as to cost.

Dated : 11th February, 1986.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

Endst. No. 70-82/361, dated 10th March, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

No. 9/7/86-6Lab/2445.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Shankar Textile Mills, 41/4, Bahalgarh Road, Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 102 of 81

between

SHRI RAVI DUTT, WORKMAN AND THE MANAGEMENT OF M/S. SHANKAR TEXTILE MILLS, 41/4, BAHALGARH ROAD, SONEPAT

Shri Bahadur Yadav, A. R. for the workman.
Shri R. C. Sharma, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Ravi Dutt and the management of M/s. Shankar Textile Mills, 41/4, Bahalgarh Road, Sonapat, to this Court for adjudication, —vide Haryana Government Gazette Notification No. ID/SPT/89/81/35847, dated the 30th July, 1981:—

Whether the termination of services of Shri Ravi Dutt, was justified and in order? if not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent as a Boilerman for the last about seven years on monthly wages of Rs. 300 and that the respondent chose to terminate his services unlawfully with effect from 9th March, 1981 through a telegram and that prior to that no notice or retrenchment compensation was paid to him. *Inter alia*, it is alleged that prior to his termination the workforce of the respondent concern was on general strike.

3. In the reply filed by the respondent, the correctness of the allegations made in the demand notice has been controverted. It is alleged that the same is full of mis-representation and fabricated facts. It is alleged that the petitioner alongwith the others resorted to stay-in-strike on 31st January, 1981 and thereafter workforce went on general strike, which was accompanied by acts of intimidation and illegal activities and the claimant was taking active part in instigating other workmen and that the said strike was prohibited by the Government of Haryana on 10th March, 1981, but inspite of repeated notices, the petitioner failed to report for duty and so, the respondent was justified in terminating the services of the petitioner.

4. On the pleadings of the parties, the following issues were settled for decision on 5th February, 1982:—

(1) Whether the termination of services of Shri Ravi Dutt, was justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri Suresh Kumar, Time Keeper, MW-2 Shri Prahalad Singh, Head Clerk, office of the Labour-cum-Conciliation Officer, Sonapat and the workman appeared as his own witness as WW-1.

6. Learned authorised representatives of the parties heard.

Issue No. 1

7. The petitioner Shri Ravi Dutt when he appeared as WW-1 made a statement completely in corroboration of the allegations made in the demand notice. He further elaborated that the management has not filed any cause against him in the Industrial Tribunal and that no dues were sent to him alongwith the telegram,—vide which his services were terminated. The management examined Shri Suresh Kumar, Time Keeper, who stated that in the premises of M/s. Om Weaving three other units under the name and style of M/s. Jagdish Textile, Shankar Textile and Kishore Textile are being running and that before 31st January, 1981 the workforce of all these factories resorted to stay-in tool down strike and after 31st January, 1981, they went on general strike and that the workman pitched a tent outside the gate of the factory and the management issued many notices calling upon the workforce to give up strike and resume their duties. Copies of these notice were sent to the Labour Department and the Government of Haryana declared the said strike as illegal,—vide notification Exhibit M-1, but inspite of that the workman fail to resume his duties and so, his name was struck off from the rolls of workman with effect from 31st March, 1981. MW-2 Shri Prahalad Singh, stated that,—vide letter dated the 11th March, 1981. the strike resorted to by the workman was declared illegal by the Government of Haryana and so, the management issued notices to the workman to resume their duties and that the name of the petitioner was not in the list of workman, who had gone on strike.

8. The learned Authorised Representative for the management Shri R. C. Sharma forcefully contended that since the claimant did not resume his duty after prohibition of strike by the Government of Haryana,—vide gazette notification dated the 9th March, 1981, the management was justified in terminating the services under the Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules, 1959. From the said rules a pointed reference was made to rule 20(1)(k). The said rule contains acts and omissions which shall be taken as misconduct. One of the clause is that any workman striking work illegally shall be guilty of misconduct. The plea of termination of service of the workman was taken by the management to prove its point that after the strike was prohibited by the Government of Haryana,—vide gazette notification, dated 9th March, 1981, the management was justified in terminating the services of the workman for willful absence and also for mis-conduct as provided in the standing Order referred to above. The plea of the management that the workman did not resume his duty after prohibition of strike by the Government of Haryana is a trumped up one, because in case, the workman would not have been keen to resume his duty, I see no reason for him to raise a demand notice on 18th May, 1981, which he did so, I am inclined to go with the workman that the management deliberately prevented him from resuming his duty after the strike was prohibited by the Government of Haryana and thereby terminated the services in

flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947. So, I find the termination illegal and void *ab initio* and not sustainable in the eyes of law and as such the same set aside and the workman is ordered to be reinstated forthwith continuity of service and with full back wages. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Dated, the 11th February, 1986.

Presiding Officer,
Labour Court, Rohtak, Camp Court,
Bahadurgarh.

Endorsement No. 102-81/362, dated the 10th March, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

No. 9/7/86-5Lab/2446.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 9 of 83.

between

SHRI RAGHBIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA ROADWAYS ROHTAK.

Shri S.S. Gupta, A.R. for the workman.
Shri S.C. Singla, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Raghbir Singh and the management of M/s. Haryana Roadways, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/3879-84, dated 2nd February, 1983 :—

Whether the termination of service of Shri Raghbir Singh, is justified and in order? If not, to what relief is he entitled?

2. The case of the petitioner is that he was employed with the respondent as a Conductor since 8th June, 1976 but the respondent choose to terminate his services unlawfully,—*vide* order dated 3rd November, 1980 after holding a farce of an enquiry on trumped up charges of embezzlement, in which he was not given full opportunity of participation *Inter alia*, it is alleged that he was not furnished copies of the complaints received against him, nor he was given adequate opportunity of defence and further more the Enquiry Officer was biased against him being a departmental official, who was acting both as Presenting Officer for the management and as an Enquiry Officer and that the statement of the witnesses of the management were not recorded in his presence and he was not given full opportunity of cross-examination. On these farious grounds he has assailed the fairness of the enquiry report and the resultant order of termination passed on the basis of the same.

3. In the reply filed by the respondent, most of the allegations made in the demand notice have been controverted. Preliminary objections taken are that since the services of the petitioner were terminated after a fair and valid domestic enquiry, in which, the petitioner was given full opportunity of participation, vires of the same cannot be challenged by the petitioner. It is also alleged that the mangement has lost confidence in the workman.

4. On the pleadings of the parties, the following issues were settled for decision on 21st June, 1984: |

1. Whether the enquiry conducted by the management was fair and proper?

2. Whether the management has lost confidence in the workman ?

3. Whether the termination of services of Shri Raghbir Singh, is justified and in order ? If not, to what relief is he entitled ?

5. I, further directed that issue No. 1 regarding domestic enquiry shall be treated as preliminary issue, —vide my detailed order dated 3rd October, 1984. So, both the parties were allowed to produce their evidence on this issue and the management examined MW-1 Shri Gopal Dass, Accounts Officer, who conducted the domestic enquiry and MW-2 Shri Pawan Kumar, clerk and the workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

Issue No. 1

7. The learned Authorised Representative of the petitioner Shri Gupta contended that since no copies of the complaints were given to the petitioner before the domestic enquiry was held, the same cannot be said to be fair and proper. He further assailed the conduct of the Enquiry Officer by arguing that as per his own showing he was also acting as Presenting Officer for the management and that he called the workmen through a messenger to join the enquiry Proceedings and as such, the workman was not given adequate opportunity of defending himself. He further contended that in holding the enquiry proceedings, the Enquiry Officer flouted the principles of natural justice, because he hustled through the enquiry proceedings on a single day and returned a verdict of guilty against the petitioner. In support of his contention Shri Gupta placed reliance upon 1972 SLR 845 between V.D. Gupta versus State of Haryana and 1975 (I) SLR page 2 between State of Punjab versus Bhagat Ram. These authorities were handed out on facts entirely different from the facts of the present case. On the other hand, on behalf of the respondent reliance has been placed upon 1977 (I) SLR 750 between State of Haryana versus Rattan Singh. In this authority their Lordships of the Hon'able Supreme Court of India observed that it is well settled that in a domestic enquiry strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. Their Lordships depreciated the approach of the lower Court in facing the Tribunal to examine the passengers before a valid finding could be given. In 1975 (I) SLR 500 between Managal Singh versus Commissioner of Himachal Pradesh Government Transport. His Lordship Mr. Justice R.S. Pathak (who now incidentally adorns the Supreme Court bench) held that when the petitioner is already aware of the material against him and did not insist upon supply of list of witnesses, the same cannot form basis to vitiate the enquiry proceedings. I have gone through the enquiry proceedings in this case placed on record by the respondent. The petitioner nowhere objected to the non supply of copies of the complaints against him, though the gist of the same were conveyed to him in the charge-sheet, receipt of which is not denied by the petitioner. There is an averment in the charge-sheet that the petitioner can inspect any documents during office hours relevant to the enquiry proceedings. The petitioner also cross-examined all the witnesses examined during the enquiry proceedings. He further made a statement that he will not produce any evidence in defence. Under these circumstances, it is difficult to hold that the Enquiry Officer was biased in favour of the management or that he flouted the principal of natural justice in holding the domestic enquiry. It has been held in AIR 1966 Madhya Pradesh page 136 between Rajinder Kumar versus Vice Chancellor of Vikram University and others that what is required to adhere to the principal of "Audit Alteram Partem" is only a fair opportunity to the delinquent employee to state his case and to prove his innocence. If after such opportunity, the person concerned does not avail of it and if the conclusion is against him, it cannot be said that the principles of natural justice have been violated. The concept of natural justice is a magnificent thoroughbred which must not be allowed to turn into a wild and unruly horse, careering off where it hits, unsaddling its rider and bursting into the fields where the sign "no passage" is put up. Under these circumstances, I find that the enquiry in this case, was well within the parameters of the principles of natural justice and in conducting the same the Enquiry Officer did not commit any procedural irregularity or caused any injustice to the petitioner. Under these circumstances, there is no difficulty in holding the enquiry conducted in this case was fair and proper and as such, this issue is answered in favour of the management.

8. At the very outset the learned Authorised Representative of the parties agreed that in case, the issue regarding domestic enquiry is answered in favour of the management, the case need not be adjourned any further for evidence on other issues, because then only question of interference by this Court under section 11-A of the said Act survives for consideration. They were also heard on this point. So, I propose to dispose of issue No. 2 and 3 hereunder.

9. The petitioner is alleged to have embezzled different amounts while on duty as a Conductor on different dates within a span of less than two months on five occasions. He was charge-sheeted for these allegations. A proper domestic probe was held. He was found guilty of mis-appropriation. So, the management was justified in inferring that the petitioner is incorrigible. Furthermore, the Hon'able High Court of Punjab and Haryana in a recent authority reported in 1984 (3) SLR 514 between State of Punjab versus Surat Singh and others has observed that in case of mis-appropriation of Government money the Conductors of the State Transport, reinstatement should not be ordered and the Court should explore the possibility of alternative employment of the workman. While giving his decision, his Lordship placed reliance upon full bench authority of the Gujarat High Court reported in 1933 Lab. I.C. 134 between Gujarat State Road Transport Corporation Ahmedabad versus Jamna Dass Becharbhai. In this authority their Lordships cautioned the Courts against reinstatement of defaulting Conductors, who pocket the fare and in the process rob the national Exchequer and their reinstatement would

give them an opportunity of nibbling at the State funds again. In view of these observations quoted above and looking to the fact that the petitioner has committed mis-conduct five times within a span of less than two months by mis-appropriating government money, no interference by this Court under section 11-A of the said Act in diluting the punishment awarded to the petitioner is called for. So, the petitioner is not entitled to any relief. The reference is answered and returned accordingly. There is no order as to cost.

B.P. JINDAL,

Dated : 20th February, 1986.

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

Endst. No. 9-83/363, dated 10th March, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

No. 9/786-6Lab./2447. —In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/S Haryana Steel Federation of Co-operative Consumer Store, Ltd., Bhiwani.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 282 of 83.

Between

SHRI BHAWANI SHANKAR, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA STATE
FEDERATION OF CO-OPERATIVE CONSUMER STORE LTD.,
BHIWANI.

Shri Raghbir Singh, A.R. for the workman.
None for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Bhiwani Shankar and the management of M/s. Haryana State Federation of Co-operative Consumer Store Ltd., Bhiwani, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 64298-303, dated 8th December, 1983:—

Whether the termination of services of Shri Bhawani Shankar, is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the petitioner is that he was working with the respondent as a Accounts Assistant w.e.f. 4th July, 1980 on monthly wages of Rs. 760 but the respondent chose to terminate his services unlawfully w.e.f. 7th September, 1982 without any prior notice or payment of any retrenchment compensation as envisaged under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, preliminary objections taken are that this Court has no jurisdiction to decide the present reference as the respondent is not an "industry" as defined in section 2(j) of the said Act and secondly the petitioner has no right to stay-in employment because he was appointed on *ad hoc* basis and as such, his services could be terminated without any prior notice and so, the provisions of section 25F of the said Act are not attracted.

4. On the pleadings of the parties, the following issues were settled for decision on 23rd August, 1985:—

1. Whether this Court has no jurisdiction to try this reference?
2. Whether the applicant has no *locus standi* to raise the present dispute?

3. Whether the termination of services of Shri Bhawani Shankar, is justified and in order? If not, to what relief is he entitled?

5. Both the parties were allowed to produce their evidence. The petitioner himself appeared as WW-1 and the management examined MW-1 Shri Vijay Kumar, General Manager.

6. As the case was posted for arguments, the respondent absented and as such, *ex-parte* proceedings order was passed against the respondent. So, this case is before me now, for disposal in *ex-parte* manner.

7. Shri Raghubir Singh, Authorised Representative of the petitioner heard.

8. As per the admission of the management, the petitioner has served with the respondent for more than two years. His date of appointment i.e. 4th July, 1980 and date of termination 7th September, 1982 has not been disputed by the respondent. So, the petitioner has actually worked for more than 240 days with the respondent on the date his services were terminated in the last 12 calendar months. On behalf of the respondent, the plea taken was that since the appointment of the petitioner was on *ad hoc* basis, so, his services could be terminated at any time without any prior notice. The contention is absolutely unfounded. On behalf of the petitioner reliance has been placed upon 1976 LLN, 5 between State Bank of India and N. Sundaramony. The observations made by their Lordships of the Hon'ble Supreme Court of India in paragraph number 9 can be quoted with advantage:—

"The key to the question of what retrenchment is, is to be found in S.2(oo) of the Industrial Disputes Act, 1947. The term "for any reason whatsoever" in S.2(oo) is very wide and also admitting of no exception. Whatever the reason every termination spells retrenchment. So, the sole question is : has the employee's service been terminated ? A termination takes place where a term expires either by the active step of the master or the running out the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination, howsoever, produced. In the present case the employment ceased, concluded, ended on the expiration of nine days—automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from S.25F(b) is inferable from the proviso to S.25F(a)".

9. So, there is no escape from the conclusion that termination in whatever manner brought about will amount to "retrenchment" as defined in section 2(oo) of the said Act and before doing that it is obligatory upon the management/respondent to comply with the mandatory provisions of section 25 F of the said Act and non compliance with the same will vitiate the order of termination. Had the respondent acted with responsibility half months pay for two years would have concluded the story but that did not happen and now, the respondent will have to pay salary for no service rendered, because the benefit of back wages cannot be denied to the petitioner, as he raised the demand notice within three months of his termination. The termination was brought about on 7th September, 1982 and the date given upon the demand notice appended with the order of reference is 12th January, 1983. So the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated : 17th February, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.

Endst No. 282-83/364 Dated : 10th March, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.

No. 9/7/86-6Lab./2448.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of Haryana Roadways, Sirsa, (ii) Transport Commissioner, Haryana, Chandigarh.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 32 of 85

Between

SHRI RAM PARTAP, WORKMAN AND THE MANAGEMENT OF (I) HARYANA ROADWAYS, SIRSA (II) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.

Shri V.K. Bansal, A.R. for the workman.
Shri V.K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ram Partap and the management of (i) Haryana Roadways, Sirsa (ii) Transport Commissioner, Haryana, Chandigarh, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 8118—23 dated 4th March, 1985:—

Whether the termination of services of Shri Ram Partap, Conductor is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor since 14th February, 1974 on monthly wages of Rs. 750 and that the respondent terminated his service,—*vide* order dated 30th August, 1984, which was illegal and unlawful and was passed in flagrant disregard of the provisions of the Industrial Disputes Act, 1947, because a farce of an enquiry was conducted into the alleged allegations regarding intention of the petitioner to commit mis-appropriation of government money, in which, he was not given an opportunity of participation that the report submitted by the Enquiry Officer is not reasoned one and so, the order of termination based upon the same is liable to be set aside.

3. In the reply filed by the respondent, preliminary objection taken is that no cause of action has accrued in favour of the petitioner. It is further alleged that a report was received against the workman on the basis of which a charge-sheet was issued and a reply was submitted by the workman and after proper domestic enquiry, in which the workman was given complete opportunity of participation, he was found to be guilty and thereafter a final show cause notice was issued and the workman was given an opportunity of personal hearing and only thereafter the order of the termination was passed.

4. On the pleadings of the parties, the following issues were settled for decision on 6th June, 1985 :—

1. Whether a valid and proper enquiry was held by the respondent before terminating the services of the workman? OPM.

2. Whether the termination of services of Shri Ram Partap Conductor is justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri Shyam Wadhwa, clerk and Mahavir Parshad, Inspector MW-2 and MW3 Shri Dharam Chand, Superintendent, Haryana Roadways, Sirsa. The workman appeared as his own witness as WW-1.

6. Authorised Representatives of the parties heard.

Issue No. 1

7. Before going into the validity or otherwise of the enquiry report, I deem it proper to give a brief resume of the allegation against the workman. The case of the management is that on 17th June, 1983 the petitioner was a Conductor upon bus No. 8729 HRN bound from Fazilka to Delhi and the checking was conducted by Shri Mahavir Parashad, Inspector, near Hansi Octroi post. He found then passengers without tickets who travelled from Hissar to Hansi and from whom the petitioner had not collected any fare. It was reported by the Inspector that if no checking had been conducted, the Conductor would have collected the fare and would not have issued the tickets to the passengers. So, he inferred that the Conductor/Petitioner had intention to commit fraud of government money. On the basis of this report a charge-sheet was issued and Shri Dharam Chand, Superintendent of the Haryana Roadways, Sirsa was appointed Enquiry Officer. He was examined as MW-3. He stated that,—*vide* order Ex. M-3 he was appointed Enquiry Officer in this case and that he recorded the statement of the Inspector in the presence of the petitioner and that the enquiry conducted by him was impartial and that his report is Ex. M-6. He further admitted that Shri Mahavir Parshad, Inspector, was the Presenting Officer for the management and that questions were put to the petitioner by Shri Mahavir Parshad. Statement of Shri Mahavir Parshad MW-2 is entirely in-consonance with his report and as such, I need not suffer repetition. He also admitted that he conducted cross-examination of the petitioner.

8. The learned Authorised Representative of the petitioner Shri Bansal forcefully contended that it is a case of no evidence against the petitioner, because the report against the petitioner is based upon conjectures and so the findings of the Enquiry Officer. There is no denying the fact that usually domestic probes are conducted by persons not well versed with procedural laws and as such, adherence to the sophisticated rules of evidence are all not insisted upon during such probes, but at the same time the enquiry conducted should be fair and proper, well within the bounds of principles of natural justice. In the present case, the Enquiry Officer has flouted all norms of fair probes. Admittedly there was no presenting Officer for the management during the enquiry proceedings and so, this job was left to Shri Mahavir Parshad, Inspector, on whose complaint a probe was being held. This Court has not come across any case of domestic probe where a delinquent employee should be have exposed to

cross-examination by the complainant. Furthermore, it was all in the realm of conjectures about the charges framed against the petitioner. At best, the petitioner was negligent in not collecting the fare from ten passengers, who travelled from Hissar to Hansi. It is not the case of the management that the petitioner had collected any fare from the passengers. Shri Mahavir Parshad simply reported that had the checking not been made near Hansi Octroi Post, the petitioner would have collected the fare from the passengers and pocketed the same. This Court is not endowed with any uncanny insight to know about the real intention of the petitioner in not collecting the fare from the passengers and would refuse to believe that Shri Mahavir Parshad could have any such peep into the mind of the petitioner. Furthermore, the enquiry report is just a rendering of the entire evidence produced during the enquiry proceedings and there is no appraisal of the evidence. At the fag end of the report Ex. M-6, the Enquiry Officer simply held the petitioner guilty of the charges framed against him. It is difficult to dub the report of the Enquiry Officer as being benefit of any reasoning but there is not reasoning at all. Under the circumstances, there is no difficulty in holding that the domestic enquiry in this case was not fair and proper, because in holding the same Enquiry Officer threw to the wind all norms of air probe and that he committed serious procedural irregularities vitiating the enquiry proceedings and as such, this issue is answered against the respondent.

Issue No. 2

9. Since issue No. 1 regarding domestic probe has gone against the respondent, the learned Law Officer of the respondent contended that he has nothing to argue on this issue. There is nothing on record about the previous service record of the petitioner. On the other hand, he has placed on record two certificates Ex. W-1 and W-2, *vide* which, his services were appreciated by the Transport Commissioner, Government of Haryana, for the services rendered by him during the year 1982 Asian games. So, the order of termination based upon the enquiry report, cannot be sustained and as such, the same is set aside.

10. Now, the question of back wages survives, which are ordinarily not denied unless the demand notice is inordinately delayed. The normal rule, in case, the order of termination is displaced by the Court, is to award full back wages. In the present case, unfortunately there is no date mentioned upon the demand notice received alongwith the order of reference. The order of reference is dated 4th March, 1985. Some time must have been taken by the Government of Haryana in making a reference to the Labour Court. So, conjecturally the date of demand notice can be fixed some where at the beginning of the year 1985. The services of the petitioner were terminated, *vide* order dated 30th August, 1984. So, there is a time lag of only four months. Under these circumstances, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated: 25th February, 1986.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hisar.

Endst. No. 32-85/365, dated: 10th March, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

~~BALE~~

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hisar.

No. 9/7/86-Lab/2449.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Haryana Tourism Corporation Ltd., Chandigarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 98 of 84

between

SHRI BAHADUR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA
TOURISM CORPORATION LTD., CHANDIGARH.

Shri Gope Masih, A.R. for workman.

Shri Balwant Singh, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana, referred the following dispute between the workman Shri Bahadur Yadav and the management of M/s. Haryana Tourism Corporation Ltd., Chandigarh, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 22283-87, dated the 21st June, 1984:—

Whether the termination of services of Shri Bahadur Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was appointed as Helper English Kitchen with the respondent corporation at Faridabad on 18th March, 1974 and thereafter he was transferred to Uchana (Karnal) on 6th June, 1981 and further to Sirsa Tourist Complex on 3rd June, 1983 and that all through his work and conduct has been satisfactory but the respondent choose to terminate his services illegally,—vide order dated 15th March, 1983, and in passing the same the respondent contravened the provisions of the Industrial Disputes Act, 1947. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, it is admitted that the petitioner worked initially as a daily wager from 25th April, 1976 to 4th March, 1981 with break in services and thereafter he was appointed on provisional basis on 26th February, 1981 as a helper/job boy, but the work and conduct of the petitioner during the tenure of his employment was not satisfactory and so, the services of the petitioner were terminated as per stipulation in the letter of appointment and so, it is asserted that the order of termination was legal and valid.

4. On the pleadings of the parties, the following issue was framed on 19th March, 1985:—

1. Whether the termination of services of Shri Bahadur Singh is justified and in order? If not, to what relief is he entitled?

5. The petitioner himself appeared as WW-1 and the management examined MW-1 Shri S.K. Dahiya, Divisional Manager and MW-2 Shri M.L. Mittal, Manager Skylark Tourist Complex Panipat.

6. Heard.

7. This is the case of the respondent that the petitioner was employed as a daily wager on 26th April, 1976. It is also admitted by the respondent that he worked as such upto 4th March, 1981 with breaks in service. It has not been elaborated in the reply filed by the respondent as to what extent of breaks in services. In 1982 ILLJ page 72 between Sanstosh Gupta V/s. State Bank of Patiala, it has been held that break in services will not deprive the workman from the benefits of section 25F of the Industrial Disputes Act, 1947, in case, he has completed 240 days of actual work with the respondent during the last 12 calendar months. It does not help the respondent to argue that the petitioner initially worked as daily wager from 26th April, 1976 to 4th March, 1981, because the Hon'ble Supreme Court in the latest authority on the point reported in 1985 Lab. I.C. 1973 between H.D. Singh V/s. Reserve Bank of India and others has held that even a daily wager cannot be thrown out from the employment in case, he has worked for 240 days during the last twelve calendar months. In the authority under reference, the petitioner had worked for 202 days with the respondent and the Hon'ble Supreme Court choose to add 52 Sundays and Seventeen gazetted holidays to cross the mark of 240 days and passed strong observations against the Reserve Bank of India and further observed as under:—

"We have no option but to observe that the bank, in this case, has indulged in methods amounting to unfair labour practice. The plea that the appellant was a badli worker also has to fail".

8. These observations were made by the Hon'ble Supreme Court of India in context of the unfair labour practice detailed in 5th Schedule attached to the Industrial Disputes Act, as defined in Section 2 (ra) of the Industrial Disputes Act, 1947. Though, no plea was taken by the respondent that the petitioner was caught in the act of pilfering vegetable ghee and empty Beer bottles while he was employed at Karnal but the evidence was adduced by the respondent to prop up this plea by examining MW-1 Shri S.K. Dahiya and MW-2 Shri M.L. Mittal. Reliance was also placed upon the alleged confession made by the petitioner in his letter, Ex. M-1, dated 24th October, 1983. This alleged confession was made by the petitioner after his services had been terminated. The question would be that if the petitioner had been guilty of any attempt to pilfer any article from the complex of the respondent, a proper domestic probe should have been held and only thereafter action could be taken, but in this case, no such procedure was adopted by the respondent, which choose to pass on order of termination on the basis of the report sent by the Incharge of the Complex at Karnal lake at Uchana. Under these circumstances, order of termination cannot be sustained being illegal and unlawful because while passing the same, the respondent did not adhere to the provision of section 25F of the Industrial Disputes Act, 1947,

because his termination squarely falls within the ambit of term "retrenchment" as defined in section 2 (00) of the Industrial Disputes Act, 1947 Under these circumstances, the petitioner is ordered to be reinstated. Now, the question of back wages remains to be determined. The order of termination is dated 15th September, 1983. The demand notice is dated 27th February, 1984. That would mean that the demand notice was raised by the workman within five months of his termination. This delay cannot be said to be as inordinate one. so, the petitioner is ordered to be reinstated with continuity of services and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated : 27th February, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 98-84/366 dated the 10th March, 1986

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/7/83-6 Lab/2450.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. (i) Chief Administrator Haryana Urban Development Authority, Sector 18, Chandigarh. (ii) Executive Engineer Haryana Urban Development Authority, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 157 of 1985

between

SHRI RANDHIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. (i) CHIEF ADMINISTRATOR, HARYANA URBAN DEVELOPMENT AUTHORITY, SECTOR-18, CHANDIGARH, (ii) EXECUTIVE ENGINEER, HARYANA URBAN DEVELOPMENT AUTHORITY, ROHTAK

Present.—

Shri S.N. Vats, A. R. for the workman.
Shri M. Kaushik, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Randhir Singh and the management of M/s. (i) Chief Administrator, Haryana Urban Development Authority, Sector 18, Chandigarh, (ii) Executive Engineer, Haryana Urban Development Authority, Rohtak, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 38393-99, dated 17th September, 1985 :—

Whether the termination of services of Shri Randhir Singh is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Truck Driver since 9th November, 1979 but the respondent choose to terminate his services unlawfully with effect from 12th September, 1984 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, the preliminary objections taken are that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and further the petitioner is not a "workman" as defined in section 2(S) of the said Act. On merits, it is alleged that the petitioner was appointed on purely temporary basis and as per stipulation in the letter of appointment his services could be dispensed with at any time without assigning any reason. It is also alleged that the petitioner was booked for an offence under section 363, 366, 376 of the Indian Penal Code by police station Bahadurgarh and was arrested on 4th June, 1984 and released on bail on 18th June, 1984 and that the petitioner remained absent from duty from 14th May, 1984 to 25th June, 1984 and so, it is alleged that the order of termination was legal and valid and that the explanation of the petitioner was also called by the Executive Engineer on 21st June, 1984 and the petitioner in his reply admitted his absence from duty.

4. On the pleadings of the parties, the following issues were framed by me on 30th December, 1985 :—

- (1) Whether the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 ? OPR.
- (2) Whether the petitioner is a "workman" as defined in section 2(s) of the I.D. Act, 1947 ?
- (3) Whether the termination of services of Shri Randhir Singh is justified and in order ? If not, to what relief is he entitled ?

5. The petitioner himself appeared as WW-1 and the respondent examined Shri R.R. Garg as MW-1.

6. Heard.

Issue No. 1:

7. When the guidelines laid down in 1978 Lab. I.C. 467 between Bangalore Water Supply and Sewerage Board versus A Rajappa and others is taken into consideration, the respondent cannot be taken out from the purview of "industry" as defined in section 2(j) of the said Act and so, the learned Authorised Representative of the respondent did not press this issue.

Issue No. 2:

8. The petitioner was employed as a Truck Driver, so, there is no question of his being not a "workman" as defined in section 2(s) of the said Act.

Issue No. 3:

9. Admittedly the petitioner was booked for an offence under sections 363, 366, 376 of the Indian Penal Code, —vide FIR. number 208, dated 25th May, 1984 police station Bahadurgarh. It has also not been denied by the petitioner that he remained absent from duty from 13th May, 1984 to 21st June, 1984 because of his involvement in a serious offence, in which, he could be awarded imprisonment for life. The plea of the petitioner that he was booked on the basis of trumped up charges is borne out from the fact that ultimately the police had to submit a report to the Court for cancellation of case against the petitioner. Cancellation of the case was allowed by the Court of Sub-Divisional Judicial Magistrate, Bahadurgarh,—vide his order dated 19th December, 1984. Photo copy of the order is Exhibit W-2. So, the plea of the respondent that the services of the petitioner were terminated because he was booked in a case involving moral turpitude is of no avail to the respondent, because nothing came out of the case, for which, the petitioner was booked. The same was even not sent to the Court for judicial verdict, probably for want of evidence. Since the petitioner was booked for very serious offence, his absence from duty was very natural as he had to prepare his defence specially when he was being booked on false allegations. Under these circumstances, it was the duty of the respondent not to terminate the services of the petitioner without taking into consideration these circumstances. Further more the petitioner was in the employment of the respondent since the month of November, 1979 and his services were terminated on 12th September, 1984, so he has served with the respondent for less than five years. On the one hand, the plea of the respondent is that services of the petitioner were terminated as per stipulation in the letter of appointment and on the other hand, it was argued that the same were terminated because of the involvement of the petitioner in a case involving moral turpitude. Under these circumstances, the order of termination was illegal and unlawful and the same was passed in gross violation of the provisions of the section 25-F of the said Act, because at the time of passing the same no retrenchment compensation or prior notice was given to the petitioner, so his termination squarely falls within the ambit of term "retrenchment" as defined in section 2(oo) of the said Act. So, the order of termination is set aside and the petitioner is ordered to be reinstated. Since the demand notice was raised by the petitioner within six months of his termination, he cannot be denied the benefits of back wages. So, the petitioner is ordered to be reinstated with continuity of services and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 28th February, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endorsement No. 157-85/367, dated 10th March, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Department Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.